HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Appeal No. 30 of 2005

Date of Decision: 23rd February, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting.~~

Date Initial of Judge

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Appeal No. 30 of 2005

Satya Prakash
S/o Sri Pooran Singh
R/o Kotla Santo (Foolsani) Nakarpur,
Police Station Cantt.
District – Dehradun … Appellant

Versus

State of Uttaranchal … Respondent

Sri K.S. Verma, learned counsel for the appellant
Sri Rajeev Mohan, Brief Holder for the State for the respondent

Hon'ble J.C.S. Rawat, J.

This Criminal Appeal is directed against the judgment and order dated 31.01.2005 passed by Additional Sessions Judge / FTC VII Dehradun in Session Trial No. 73 of 2003 convicting and sentencing the appellant-Satya Prakash to undergo 7 years R.I. u/s 304-B and 1 year R.I. and fine of RS. 2,500/- u/s ¾ D.P.Act and in default of payment of fine the appellant shall undergo three months R.I.

The Sessions Judge convicted the appellant u/s 498-A but the learned Sessions Judge did not award any sentence on that count.

Feeling aggrieved by the said order and judgment the appellant preferred the appeal before this Court.

Brief facts for the disposal of this appeal are that marriage of the deceased-Rekha was solemnized with the appellant-Satya Prakash on 10.05.1997. At the time of marriage, dowry was given to the appellant-Satya Prakash by the complainant-Darshan Lal. After sometimes of the marriage, the appellant demanded scooter in dowry and started to harass the deceased-Rekha and used to commit marpeet with the deceased. It was further alleged that the brothers of the

appellant namely Somti and Ritu also used to treat the deceased-Rekha cruelly and they used to hurl abuses upon the deceased-Rekha. The prosecution has also alleged that the complainant-Darshan Lal went to the matrimonial house of the deceased and tried to pacify and settle the matter but the appellant and his brothers did not stop to harass the deceased-Rekha or to demand the dowry from the deceased. In the night of 16.02.2003, the deceased was found dead. The appellant and the relatives of her husband administered poison to the deceased. Consequently she died and the death occurred due to the non-fulfillment of the desire and demand of dowry of the appellant. The information was given to the complainant-Darshan Lal and the body was taken to the Doon Hospital and the parents of the deceased went there and they found her daughter dead there. They also found the injuries on the person of the deceased. The father of the deceased gave a report to the Police Station on 17.02.2003 and F.I.R. was lodged and the matter was investigated. The post-mortem was conducted and panchnama was also prepared and thereafter the chargesheet was submitted after the investigation.

The accused was charged under Section 304-B, 498-A and u/s ¾ D.P.Act. The accused pleaded not guilty and claimed the trial. The other co-accused Somti, Kishan Lal and Ritu were acquitted by the trial court.

The prosecution adduced the evidence of Darshan Lal-PW1 father of the deceased, Smt. Santosh-PW2 mother of the deceased, Dharam Pal-PW3 is the uncle of the deceased, Dr. P.C. Kapri-PW-4 & Dr D.S. Rawat have conducted the post - mortem of the deceased. Prem Singh-PW6 is S.I., Rajender Prasad-PW7 is constable. They are the formal witnesses. Brijendra Kumar Jual-PW8 is the investigating officer of this case.

The defence has also adduced the evidence of Smt. Raj Kumari-DW1 who is the jaithani of the deceased, Sri Devendra

Singh-DW2 who is son of DW1. They have stated that the deceased had an infant on her womb and she wanted to miscarriage the said child and she took some medicine by which she fell unconscious after taking the medicine and subsequently she died.

The appellant in his statement recorded u/s 313 Cr.P.C. denied the prosecution case and stated that he has been falsely implicated in this case and claimed the trial.

After appraisal of the evidence, the learned Sessions Judge convicted the appellant as indicated above. The rest of the co-accused were acquitted by the learned Sessions Judge.

I have heard learned counsel for the parties and perused the record.

It is not disputed that the death of the deceased was homicidal death. The appellant himself has stated in his statement recorded u/s 313 Cr.P.C. that the allegations made against him are vague and the submitted a written submission before the learned Sessions Judge. He has stated that on the date of the incident, he had left his house at about 9:00 a.m. thereafter he came back at his residence in the evening and he found that his wife was not feeling well and there were certain abrasions on her face and he inquired about the illness and his wife stated that she had consumed some medicine and consequently thereafter she fell and got injuries on her person. Thereafter, the appellant took her to Doon Hospital and it came out that she had taken some medicine to miscarriage the child who was in her womb. Information regarding her illness was given to her parental house. The prosecution has also set up the case that the appellant-Satya Prakash administered the position to the deceased-Rekha by which she died. According to Dr. P.C.Kapri-PW4 & Dr. D.S. Rawat who conducted the post-mortem of the deceased, opined that the cause of the death could not be ascertained. The viscera was kept preserved. The said viscera was sent to the chemical examiner

at Agra and the report is on record and it has been indicated that there was insecticide poison in the viscera report. The report also reveals that the death was caused due to the poison. Thus it was homicidal death.

Now I have to determined as to who is responsible for causing the death of the deceased-Rekha. *It is a well-settled principle of law that in order to convict an accused for an offence U/s 304B IPC, the following essentials must be satisfied:-*

(i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.

(ii) Such a death must have occurred within seven years of her marriage.

(iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband.

(iv) Such cruelty or harassment must be for, or, in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

If the prosecution establishes the ingredients of section 304 B IPC as indicated above then a presumption of dowry death shall be drawn against the appellant u/s 113B of the Indian Evidence Act. It is to be kept in mind that a presumption u/s 113 B is a presumption of law. Both the sections 304 B and 113 B were inserted by the Dowry Prohibition Amendment Act (No. 43 of 1986) with a view of combat the increasing menace of dowry deaths. Section 113 B reads as follows:-

"113 B:- Presumption as to dowry death-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to

cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person caused the dowry death.

Explanation *:- For the purposes of this section 'dowry death' shall have the same meaning as in Section 304 B of the IPC (45 of 1860)"*

On proof of essentials mentioned in section 304 B IPC it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:-

(1) The question before the court must be whether the accused has committed the dowry death of a woman (This means that the presumption can be raised only if the accused is being tried for the offence u/s 304 B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty of harassment was soon before her death.

A conjoint reading of Section 113 B of the Evidence Act and section 304 B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where section 113 B of the Evidence Act and section 304 B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution.

'Soon before' is a relative term and it would depend upon circumstances of each case and no strait- jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption u/s 113 B of the Evidence Act. The expression 'soon before her death' used in 304 B IPC and section 113 B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. The determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

The word 'cruelty' used u/s 304 B IPC is not defined under that section. Section 498 A IPC makes cruelty by husband to the wife as a punishable offence. The word 'cruelty' has been defined in explanation appended to the said section. Section 498 A IPC with the explanation there under reads as follows:-

"498 A- Husband or relative of husband of a woman subjecting her to cruelty—Whoever, being the husband or the relative of the husband of a woman, subjects such

woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation:- *For the purpose of the section 'cruelty' means-*

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury to danger to life, limb or health (whether mental or physical) or the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Thus there may be occasion related to dowry. One is before the marriage and the second us at the time of the marriage and the third is at any time after the marriage. The third occasion may appear to be unending period.

Now I have to focus my attention towards the evidence adduced in this case. The ingredient Nos. 1 and 2 as indicated above are sufficiently proved that the death was unnatural death. It was contended on behalf of the appellant that the marriage took place in the year 1996 and the death did not took place within a period of 7 years. The prosecution has lead the evidence that the marriage took place on 10.05.1997 and the evidence of the prosecution is consistent in this regard and the prosecution had filed the marriage card in support of his contention. Nothing could be elicited in the cross examination of the witness that the marriage did not take place on 10.05.1997. The evidence of prosecution witness is credible and cogent in this regard. It is established that the death took place within a period of 7 years.

Now the question arises as to whether the demand of dowry was made soon before her death and she was harassed

for the same soon before the death. The phrase used ‘soon before the death’ u/s 304-B is a term which is required to be considered under specific circumstance of each case. No strait-jacket formula can be laid down by fixing any time limit. This expression is pregnant with the idea of proximity of test. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which has to be understood and determined under the peculiar circumstances of each case. In the instant case Darshan Lal-PW1 has stated in his evidence that soon before the death of the deceased-Rekha, demand was made by the appellant to the deceased. It was also stated that it was made a week’s back from the date of death and it was alleged that a sum of Rs. 30,000/- and a scooter was demanded from the deceased-Rekha. Smt Santosh-PW2, the mother of the deceased has also stated that a demand of scooter and case was made at about 10 days back from the date of the death of the deceased. Learned counsel for the defence contended that the evidence of both the witnesses is not reliable on this point. He further pointed out that this statement is an afterthought and it was only given at the time of the evidence. It was not stated by both the witnesses at the time of recording of the statement u/s 161 Cr.P.C. The perusal of the record reveals that Darshan Lal-PW1 and Smt. Santosh-PW2 had categorically stated that they had stated this fact to the Investigating Officer. They had further pointed out that the I.O. has not recorded this fact in their statement u/s 161 Cr.P.C. The witnesses stated that they could not give any reason why the I.O. did not record this fact in their statement u/s 161 Cr.P.C. The I.O. had stated that they did not mention this fact in their statement. Thus it clearly reveals that the statement with regard to the demand of dowry was made immediately before the death is not in the statement recorded u/s 161 Cr.P.C. Apart from this, the F.I.R. which has

been written by the father of the deceased-PW1 has not indicated this fact in the F.I.R. and thus it clearly reveals from the perusal of the F.I.R. as well as the statement recorded u/s 161 Cr.P.C. that this theory was propounded and developed at the time of the evidence, as such the evidence is not reliable.

The prosecution has also led the evidence that after the marriage the deceased-Rekha was happy in the matrimonial house and she did not complaint of harassment committed upon her in matrimonial house upto two years. It is also in the evidence that after two years of marriage, the appellant-Satya Prakash started treating her cruelly and also started harassing her for the dowry. The F.I.R. as well as the statement recorded u/s 161 do not find place to this fact also. Darshan Lal-PW1, father of the deceased categorically stated in his cross examination that his daughter came to his house after two years of marriage and she complaint about harassment and cruelty to her parents. It was further stated that a panchayat was held in the village and thereafter the deceased-Rekha was sent to her matrimonial house. It is also in the evidence of Smt. Santosh-PW2 that no such panchayat was held. Smt. Sanotsh-PW2 further stated that when her daughter came to her parental house after two years she complaint about the harassment and the cruelty. It is also in the evidence of the prosecution that the third daughter of the complainant, Soniya left her house with some other person and the appellant-Satya Prakash assisted the father of the deceased to search the eloped girl. It is also in the evidence that he took the father of the eloped girl for her search in his scooter. It is also in the evidence that the complainant had no land and he is a labourer. It is also in the evidence that the appellant-Satya Prakash is a carpenter and he had land in his village. In comparison, the appellant had better economic status in the society. It is also in the evidence of the prosecution that the appellant is having scooter and it was contended that if he had scooter why he will

demand for another scooter. It was further contended that it is not the case of the prosecution that he wanted to have a new one and to sell it off in the market. It is also in the evidence at the initial stage that the demand of scooter was made and to some extent it was demanded but later on the prosecution set up a theory that cash of Rs.30,000/- was demanded alongwith the scooter. Thus the prosecution story of dowry is doubtful from the beginning to the end. Thus I am of the view that the evidence on the point of immediately before the death is not credible and cogent.

There is no other direct evidence on record which may reveal that the death of the deceased-Rekha was caused by the appellant-Satya Prakash.

A has been indicated above, the ingredient Nos. 3 and 4 of 304-B have not been established as such, the presumption of Section 113-B shall not be attracted in this case.

No other point was raised before me.

The appeal is allowed. The appellant-Satya Prakash is acquitted from the charge levelled against him. The judgment and order dated 31.01.2005 passed by the Additional Sessions Judge / FTC VII, Dehradun in S.T. No. 73 of 2003 is set aside.

Appellant-Satya Prakash is in Jail. He shall be released forthwith, if not wanted in any other case.

Let the lower court record be remitted back for compliance. Compliance be submitted within two months.

(J.C.S. RAWAT, J.)

23rd February, 2006
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